APPENDIX

DRUG ENFORCEMENT ADMINISTRATION

[Docket No. 92-54]

STANLEY ALAN AZEN, M.D., REVOCATION OF REGISTRATION

On May 19, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration [DEA], issued an Order to Show Cause to Stanley Alan Azen, M.D. [Respondent], of Los Angeles, California. The Order to Show Cause proposed to revoke Dr. Aben's DEA Certificate of Registration, AA8786329, under 21 U.S.C. 824(a)(2) and (a)(4), and deny any pending applications for renewal of such registration under 21 U.S.C. 823(f) for reason that his continued registration would be inconsistent with the public interest.

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administartive Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on Los Angles, California, beginning on January 8, 1993. On October 18, 1993, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Administrator revoke Respondent's DEA Certificate of Registration.

On November 2, 1993, the Respondent filed exceptions to Judge Bittner's opinion pursuant to 21 CFR 1316.66, and on November 18, 1993, the administrative law judge transmitted the record to the Acting Administrator. The Acting Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1318.87, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that the Respondent is an emergency room physician who received his

medical degree in 1978 from Loma Linda University of Medicine in Loma Linda, California. Following an internship at the University of Southern California, and his service of two residences in emergency medicine and internal medicine, Respondent worked at the Medical Center of North Hollywood from 1982 until 1991, and as of the date of the administrative hearing was employed at Pacifica Hospital in Los Angeles.

The administrative law judge found that on September 20, 1990, Los Angeles Police Department officers received a report that a woman had died at Respondent's home, apparently from a drug overdose. The administrative law judge found that when the officers arrived at the Respondent's residence, they were advised by the Respondent that the deceased was his girl friend, and that earlier in the evening Respondent and the deceased had consumed alcohol, smoked marijuana, and snorted cocaine.

One of the officers present at Respondent's house on that evening testified at the administrative hearing that the police officers found inside Respondent's home two 5- by 7-inch cards with white power on them and four small straws in a trash can, powder on the bedboard, and glasses containing what appeared to be alcohol residue. The officer further testified that although the items were seized, to his knowledge, no tests were conducted on them.

The administrative law judge found that as a result of reports regarding the death of Respondent's girl friend, the Medical Board of California (Board) initiated an investigation of the Respondent. One of the Board investigators that participated in the investigation also testified at the administrative hearing. Interviews were conducted of various law enforcement officials, including the pathologist who examined the Respondent's deceased girl friend. The pathologist estimated that, at the time of the girl friend's death, there was approximately 20 times a fatal

quantity of cocaine in her system, and, in addition, a large quantity of cocaine metabolites. The Board investigator also interviewed the Los Angeles County coroner, who found a large amount of cocaine in the deceased's personal property. The coroner further stated that Respondent told the coroner that Respondent and the deceased commonly used cocaine and alcohol on their days off.

The Board investigator interviewed the sister of the deceased, who revealed to the investigator that she used cocaine with Respondent and the deceased on numerous occasions. The deceased's sister informed the Board investigator of her knowledge that Respondent sold cocaine and that she had purchased it from him in the past.

The Board investigator also interviewed two acquaintances of the Respondent, both of whom admitted purchasing cocaine from the Respondent on various occasions. One of the individuals stated that for a two to three year period, Respondent was his sole source of cocaine, that he purchased cocaine in half gram quantities from the Respondent, and that the Respondent made no profit from his sales. The individual went on to state that Respondent had a very high tolerance for cocaine, and carried a small vial of it with him, however he never saw Respondent use cocaine while working.

The Government also presented the testimony of a detective of the Narcotics Division of the Los Angeles Police Department regarding his conversations with the sister of the deceased. The sister told the detective that she purchased cocaine from the Respondent on several occasions; that Respondent sold cocaine to employees of the hospital where he was employed; and that her sister (the deceased) had access to the safe where the Respondent kept his cocaine.

The administrative law judge found that in March 1991, the deceased's sister, acting as a confidential informant, attempted a controlled purchase of cocaine from

the Respondent. Prior to going to Respondent's home on March 29, 1991, the detective searched the sister's clothing and car, and provided her with $100.00, however, the sister was not searched because there were no female officers on duty. The detective also conceded at the hearing that the informant's shoes were not searched, nor was there a search of the trunk or the engine compartment of her car.

The sister was observed going into Respondent's home where she remained for 20 to 30 minutes. After leaving Respondent's home, she met the detective at a pre-arranged location and turned over two containers of white powder, which later tested positive for cocaine. She told the detective that she paid the Respondent $60.00 for the cocaine.

On April 5, 1991, the Respondent was searched pursuant to a search warrant. The search revealed an amber glass vial that contained a white powder resembling cocaine. Respondent was then arrested, and allegedly stated to the arresting officer, that, "I'm just a recreational user. People don't go to jail for using cocaine." Respondent later stated, "its not my cocaine. I just store it for someone. He gives me cocaine for allowing him to store it in my house."

A search was then conducted of Respondent's house which revealed a safe which contained, among other things, two one-gram scales commonly used to weigh and package cocaine, a clear plastic bag containing a substance which was later confirmed to be two ounces of cocaine, as well as cocaine residue on various other items. A quantity of cocaine was also obtained after scraping screens, grinders, and scales found in the safe. In addition, 19 grams of marijuana were seized from the bedroom. Respondent was arrested and charged with the transportation and possession of cocaine.

On April 16, 1991, in the Municipal Court of Los Angeles Judicial District, a four-count felony complaint

was filed against the Respondent charging him with the sale and possession of a controlled substance. Respondent pled *nolo contendere* to one felony count of simple possession of a controlled substance on November 15, 1991. The Superior Court of California, County of Los Angeles convicted Respondent and sentenced him to 180 days in county jail, and three years probation. A conviction following a plea of *nolo contendere* is a "conviction" within the meaning of 21 U.S.C. 824(a)(2), *Sokoloff v. Saxbe*, 501 F.2d 571 (2nd Cir. 1974).

The Respondent testified at the administrative hearing that he first experimented with marijuana and cocaine in the 1970's and became a regular cocaine user during the 1980's. Respondent further testified that during the years of his cocaine use, his house served as a gathering place for himself, his live-in girlfriend, her sister, as well as several of their friends.

Respondent testified that he never sold cocaine to anyone, and that those individuals that stated that Respondent sold them cocaine, all had a motivation to lie, and make Respondent appear responsible for his girlfriend's death.

Respondent testified that he briefly participated in the California Medical Board's diversion program for impaired physicians, however he stated that he was rejected from the program because of pending criminal charges against him. Respondent also testified to his participation in a drug rehabilitation program at the Betty Ford Clinic, starting in April 1991, and that during his six months in the program he never tested positive for drugs.

After his conviction and as part of his probation, Respondent was enrolled in a drug rehabilitation program and was subjected to random urinalysis from November 1991 until December 1992. None of these random tests revealed drug use. Respondent's probation officer testified that she would recommend discontinuing drug testing for

Respondent because he had met the criterion of six months of negative drug tests.

In December 1991, the Board investigator received a letter from a medical consultant for the Medical Board, advising that Respondent's case should be referred to the Office of the Attorney General for administrative action against Respondent's medical license. The consultant further stated that he considered Respondent's rehabilitative attempts insufficient to overcome his more than 20 year addiction to drugs. On April 1, 1992, the Medical Board filed an accusation against Respondent, and a supplement therein was filed on May 26, 1992. The accusation alleged that Respondent was subject to disciplinary action for using, possessing and distributing cocaine. At present, no further action has been taken by the Board.

At the hearing in this matter, physicians who have supervised Respondent testified on Respondent's behalf. They testified to Respondent's professionalism and exemplary abilities.

Pursuant to 21 U.S.C. 824(a)(2), the Administrator may revoke a DEA Certificate of Registration if the registrant has been convicted of a felony relating to controlled substances. Pursuant to 21 U.S.C. 823(f) and 824(a)(4) the Administrator may revoke a registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

"(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing controlled substances.

(3 The applicat's conviction record under Federal or State laws relating to the distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or combination of the factors and give each factor the weight he deems appropriate. See Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989).

The administrative law judge found that the Respondent had been convicted of a felony offense relating to controlled substances, and therefore grounds exist to invoke his DEA Certificate of Registration pursuant to 824 (n)(2). In considering whether grounds exist to revoke Respondent's registration pursuant to 21 U.S.C. 824 (a)(4), the administrative law judge found factors one, three, four and five listed in 823(f) relevant. Factor one is applicable by virtue of the California Medical Board's filing of an Accusation and Supplemental Accusation against the Respondent. Factor three is applicable to Respondent's felony conviction, and factors four and five were found relevant based upon Respondent's abuse and alleged unlawful sale of controlled substances, as well as the subsequent related criminal charges.

The administrative law judge concluded that the Government did not prove by a preponderance of the evidence that the Respondent sold cocaine to his girlfriend's sister on March 29, 1991. The administrative law judge made this determination based upon the fact that neither the deceased's sister nor her car was thoroughly searched prior to her entering Respondent's house; that the alleged purchase was neither seen nor heard by law enforcement personnel; and that the sister of the deceased had a reason to lie.

The administrative law judge found that the record clearly established that Respondent has abused controlled

substances for many years. The administrative law judge also found that there was insufficient evidence to conclude that Respondent has recognized and dealt with the severity of his problem, or that he has progressed in his recovery to the extent that he should be permitted to continue to hold a DEA registration. Based upon evidence of Respondent's felony conviction and past drug abuse, the administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked and any pending applications be denied.

The Respondent filed exceptions to the administrative law judge's recommendation. The Respondent argued in part: That the administrative law judge's recommendations were inconsistent with the testimony given by Respondent, particularly as it related to the duration of Respondent's use of cocaine and marijuana, and the extent of the use of cocaine by Respondent's friends and acquaintances while at his home; that although the administrative law judge concluded that the Government failed to establish that a controlled buy took place, the administrative law judge nevertheless made unnecessary reference to events surrounding its occurrence; that the Respondent has demonstrated a lifelong commitment to drug rehabilitation based in part on his nearly three year successful participation in a strict and monitored regimen of randum drug testing administered through the Probation Office of Los Angeles County; that based upon the legislative intent of the public interest amendment to the Controlled Substances Act, felony convictions are not per se violations since Respondent's crime did not involve abuse of prescription drugs; statements relied upon by the administrative law judge regarding Respondent's insufficient attempts at drug rehabilitation in light of his 20 year drug addiction, were based on faulty and incomplete evidence.

The Acting Administrator having considered the entire record adopts the administrative law judge's findings of fact, conclusion of law, and recommended ruling, in part.

The Acting Administrator concurs with the Respondent's exception to the administrative law judge's finding of fact regarding testimony attributed to the Respondent of his friend's and acquaintances daily partaking of food, drink, and cocaine while at Respondent's home. While the record is not clear as to the exact time Respondent starting using cocaine, it is clear that he abused drugs for a significant period of time. Additionally, the record does not support Respondent's allegations regarding the administrative law judge's reliance on factors involving the alleged controlled buy. Finally, the record does not show that the Respondent has demonstrated a life long commitment to drug rehabilitation, nor that the administrative law judge, in making her recommendation, unduly relied upon the conclusions of the California Medical Board consultant that the Respondent's rehabilitative attempts were insufficient to overcome his 20 year addiction to drugs.

Respondent further argued that his felony convictions are not per se violations since his crime did not involve improper prescribing of controlled substances. DEA Administrators have consistently held that controlled substance related felony convictions need not involve the misuse of a DEA registration to justify revocation of the registration or denial of an application for registration. See *William H. Carranza, M.D.*, Docket No. 84-23, 51 FR 2771 (1988), *Paul Stepak, M.D.*, 51 FR 17550 (1986).

Respondent's history of noncompliance with the laws relating to controlled substances speak for itself. The Respondent not only admitted to a long history of drug abuse, but he also admitted to using cocaine and marijuana with friends, including his use of these controlled substances on an occasion when his girlfriend died as a result of cocaine use. The totality of the facts lends to the conclusion that the continued registration of Dr. Azen would be inconsistent with the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration. AA8700329, issued to Stanley Alan Azon, M.D., be and it hereby is, revoked, and any pending applications be, and they hereby are, denied. This order is effective March 3, 1994.

Dated: February 25, 1994.

Stephen H. Greene.

Acting Administrator of Drug Enforcement.

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[Filed Mar. 25, 1994]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 94-70124

DEA #92-54

STANLEY ALAN AZEN, M.D.,
Petitioner,

vs.

DRUG ENFORCEMENT AGENCY, *et al.*,
Respondents.

ORDER

Before: FLETCHER and TROTT, Circuit Judges

Petitioner's emergency motion for a stay of the Drug Enforcement Agency's certificate of registration revocation order pending review is denied. This court's March 23, 1994 scheduling order shall continue to govern this petition for review.